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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

MAY 14 1997

In the Matter of )  
 )  
Implementation of Infrastructure Sharing ) CC Docket No. 96-237  
Provisions in the Telecommunications )  
Act of 1996 )

**BELLSOUTH REPLY COMMENTS**

BellSouth Corporation, on behalf of BellSouth Telecommunications, Inc. ("BellSouth"), hereby responds to comments on BellSouth's and others' petitions for reconsideration of the Commission's decision<sup>1</sup> in the above referenced proceeding.

**Third Party Intellectual Property Issues**

In its Petition, BellSouth requested reconsideration of the *Report and Order* to the extent it obligates an incumbent local exchange carrier ("ILEC") "to seek, to obtain, and to provide necessary licensing"<sup>2</sup> of third parties' intellectual property rights whenever those rights might be implicated by a negotiated infrastructure sharing agreement. Other LECs and a manufacturer/intellectual property owner made similar requests.<sup>3</sup> The gist of all of these petitions is that it is inappropriate for both practical and legal reasons to compel the interpositioning of an

<sup>1</sup> *Implementation of Infrastructure Sharing Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-237, *Report and Order*, FCC 97-36 (rel. Feb. 7, 1997) ("*Report and Order*").

<sup>2</sup> *Report and Order* at ¶ 69.

<sup>3</sup> See, Petition for Reconsideration of GTE Service Corporation; Petition for Reconsideration and Clarification of Southwestern Bell Telephone Company; Petition for Limited Reconsideration of Octel Communications Corporation.

ILEC in a contractual relationship between an owner of intellectual property rights and the user and beneficiary of those rights. Rather, these parties all suggested that a qualifying LEC (“QLEC”) be expected to negotiate and obtain its own licensing agreement with the vendor, if one is necessary. The United States Telephone Association (“USTA”) submitted comments supporting this proposition.

Only the Rural Telephone Coalition (“RTC”) opposed these petitions. Review of RTC’s comments, however, suggests that its opposition stems more from a misunderstanding of the petitioners’ objectives than from a disagreement with their fundamental premise.

RTC erroneously posits that petitioners’ “purpose is solely to [avoid] making even a simple request to the intellectual property owner” and “to exclude licensed components of ‘infrastructure’ from the sharing mandate.”<sup>4</sup> As the various petitions make clear, petitioners make no claim that licensed infrastructure is excluded from the sharing mandate, nor do they propose to abdicate from facilitating a QLEC’s ability to obtain direct third party licenses where necessary. Rather, BellSouth merely seeks to be relieved of the obligation to be the intermediary and insurer of the negotiation and conveyance of legal rights as between two other parties.

BellSouth thus concurs with RTC that “[t]he Act contemplates mutual arrangements and cooperation”<sup>5</sup> between ILECs and QLECs in negotiated sharing arrangements, even with respect to intellectual property rights. Indeed, BellSouth expressed puzzlement in its Petition regarding the Commission’s apparent perception that ILECs might be recalcitrant about granting intellectual property rights that they own or control while negotiating willingly and in good faith all other

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<sup>4</sup> RTC Comments at 2.

<sup>5</sup> RTC Comments at 5.

aspects of a sharing agreement.<sup>6</sup> In BellSouth's view, this same "reasonable level of cooperation"<sup>7</sup> can be expected to be carried forward with respect to a QLEC's obtaining intellectual property rights that the ILEC does *not* own or control.

Thus, BellSouth is not adverse to assisting QLECs in obtaining appropriate intellectual property rights by asking its vendors to extend to QLECs direct licenses to cover the QLEC's intended use on terms equivalent to those upon which the vendor would grant those same rights to BellSouth. Vendors' acquiescence in this request would ensure that QLECs "fully benefit" from the ILEC's economies of scope and scale. Such "reasonable cooperation" in facilitating a QLEC's attainment of necessary intellectual property rights from third parties, however, is a far cry from "seek[ing], . . . obtain[ing], and . . . provid[ing]" those rights. For all the reasons set forth in its Petition and those of other parties, BellSouth remains opposed to any regulatory obligation actually to negotiate, obtain, and convey intellectual property rights that it does not own or control.

### **Pricing Issues**

MCI's Petition asking the Commission to establish pricing guidelines for negotiated sharing agreements garnered nothing but opposition. As BellSouth showed, MCI failed at the outset to demonstrate even the *existence* of pricing authority in the Commission,<sup>8</sup> much less to support the exercise of any presumed authority. Parties also agreed that pricing guidelines are *not* necessary to ensure that QLECs "fully benefit" from negotiated agreements and that the specific

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<sup>6</sup> BellSouth Petition at 2-3.

<sup>7</sup> RTC Comments at 6.

<sup>8</sup> BellSouth Comments at 2-3. *See also* GTE Comments at n.4.

guidelines proposed by MCI would be contrary to the Act's admonition that the Commission not require ILECs to take any action that is "economically unreasonable."<sup>9</sup> Moreover, MCI's Petition was recognized as nothing more than a restatement of arguments it presented previously in this proceeding. For all these reasons, the Commission should reject MCI's Petition.

### CONCLUSION

For the reasons discussed herein and in BellSouth's Petition, the Commission should modify its requirement that ILECs seek, obtain, and provide third party intellectual property rights as part of ILECs' obligations under Section 259. As discussed in BellSouth's Comments and above, the Commission also should deny MCI's Petition regarding adoption of pricing guidelines for negotiated sharing agreements.

Respectfully submitted,

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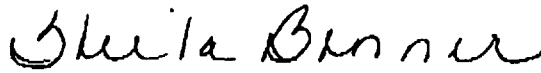
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<sup>9</sup> 47 U.S.C. § 259(b)(1).

**CERTIFICATE OF SERVICE**  
**(CC Docket No. 96-237)**

I hereby certify that I have on this 14th day of May, 1997 served the following parties to this action with a copy of the foregoing **BELLSOUH REPLY COMMENTS** by placing a true and correct copy of the same in the United States Mail, postage prepaid, addressed to the parties on the attached service list.



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